

## Rule 315

### Federal Clean Air Act Section 185 Penalty

#### (A) General

##### (1) Purpose

The purpose of this rule is to implement the mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the District portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA). [Note: "District" is defined in District Rule 1301(S)]

##### (2) Applicability

- (a) This rule is applicable to any Facility within the District Portion of the AQMA which emits or has the potential to emit nitrogen oxides (NO<sub>x</sub>) or ~~volatile organic compounds~~ Volatile Organic Compounds (VOC) in an amount sufficient to make it a Major Facility as defined in District Rule 1301. [Modified to differentiate District portion from entire AQMA pursuant to USEPA direction that entire AQMA is required to attain standard before Section 185 ceases to apply.]

[Subsection deleted pursuant to USEPA comment letter of 09/15/11 #1, stating this subsection is confusing and not necessary.]

- (b) This rule shall ~~be applicable if the AQMA fails to demonstrate attainment of the federal one hour ambient air quality standard for ozone by 2007.~~
- ~~(c)~~ ~~This rule shall~~ cease to be applicable when the AQMA is designated as attaining ~~either the one-hour or eight-hour~~ national ambient air quality standard for ozone. [Subsection modified pursuant to USEPA comment letter of 09/15/11 #2.]

##### (3) Exemption

- (a) No facility otherwise subject to this rule shall be required to remit a Federal Clean Air Act Section 185 penalty during any calendar year in which ~~all Facilities subject to such penalties within the AQMA cumulatively emit~~ facility emits verified actual emissions equal to or less than 80 percent of ~~their~~ its combined Baseline Emissions amounts. [Modified for clarity.]

(b) No facility otherwise subject to this rule shall be required to remit a Federal Clean Air Act Section 185 penalty during any calendar year in which the District has demonstrated fee equivalency in accordance with the procedures contained in Section (E) below. [Provision added to allow use of equivalency demonstration. Note: in case of a shortfall facilities will be assessed a pro rata share of the fee. Language revision suggested pursuant to USEPA comment letter of 09/15/11 #3.]

## (B) Definitions

For the purposes of this rule the definitions contained in District Rule 1301 shall apply unless otherwise defined below.

- (1) “Actual Emissions” -- Actual total facility calendar year emissions to atmosphere of each of NO<sub>x</sub> and VOC reported to the District through a verified emission inventory. Fugitive Emissions from a Facility shall not be included in the calculation unless the Facility belongs to one of the twenty-seven major source categories listed under subsection (2) of the definition of “major source” in 40 CFR 51.165(a)(1)(iv)(C).
- (2) “Baseline Emissions” -- Baseline emissions are calculated for each of NO<sub>x</sub> and VOC Facility emissions to the atmosphere for which the source is classified as a Major Facility, in accordance with Section (D) below.
- ~~(3) “Clean Unit” A Permit Unit that is complying with permit conditions that have been determined to meet the definition of Best Available Control Technology and/or Lowest Achievable Emission Rate for NO<sub>x</sub> and VOC.~~
- (3) “District Portion of the AQMA” - The entirety of the District is located within the AQMA. [Moved from former (B)(4)]
- (4) “Southeast Desert Modified Air Quality Maintenance Area (AQMA)” -- The area That portion of the Metropolitan Los Angeles Air Quality Control Region as described in 40 CFR §81.167. The entirety of the District is within the Southeast Desert Modified Air Quality Maintenance Area. 305 (Ozone one-hour standard). [Modified to define entire AQMA pursuant to USEPA direction that entire AQMA is required to attain standard before section 185 ceases to apply.]
- (5) “State Implementation Plan (SIP)” -- The federally approved body of regulations representing control strategies to minimize air pollution adopted by state and local air pollution control agencies in compliance with Section 110 of the Clean Air Act, 42 U.S.C. §7410.

## (C) Requirements

- (1) Verification of Actual Emissions

~~(a) — Any~~ By June 1, on an annual basis, any facility subject to the provisions of this rule shall, ~~upon written request by the APCO,~~ submit a verified inventory of Actual Emissions.

~~(2) — Collection of Penalty~~

~~(a) — Beginning in the year this rule is adopted, the APCO shall, for each facility subject to the provisions of this rule, notify the facility by mail of the penalty amount due~~ accordance with Rule 107 – Certification and payable Emission Statements and the date the penalty is due. If the penalty is not paid by the due date specified in the notice, the subject facility permits will be suspended and a suspension notification will be made by mail. A suspended permit may be reinstated by payment of the applicable penalty. Federal Clean Air Act Section 182(a)(3)(B). [Modified pursuant to USEPA comment letter of 09/15/11 #4 and #8 stating that the rule should require an annual report of actual emissions, as opposed to a submittal only after written request.]

[Modified pursuant to USEPA comment letter of 09/15/11 #5. This section is duplicative of (E)(4)(b) and has been deleted.]

(D) Calculations

(1) Baseline Emissions for a Facility shall be calculated as specified below:

(a) For a Facility that began operation prior to 2007, the Baseline Emissions shall be the lower of ~~the~~:

- i. The Actual Emissions during 2007; or ~~the~~
- ii. The amount of emissions allowed by permit condition.

(b) For a facility that began operation during 2007, the Baseline Emissions shall be the lower of:

- i. The amount of emissions allowed by permit condition; or
- ii. The Actual Emissions from the operation period extrapolated over calendar year 2007.

(c) For a facility that begins operation after 2007, the Baseline Emissions shall be the amount allowed under the applicable implementation plan.

(d) For an irregular, cyclical or otherwise significantly varying Facility that began operation prior to 2003, Baseline Emissions may be calculated as the average of the verified Actual Emissions for any two years of the years 2003 through 2007 that the APCO determines are the most representative of operation, if the facility demonstrates in writing to the satisfaction of the APCO and USEPA that they are not a regular Facility.

~~(e) For a facility that includes a Clean Unit, Baseline Emissions may be calculated [Removed pursuant to subsection a through d above excluding the emissions from all Clean Units, if the Facility demonstrates in writing to the satisfaction of the APCO and USEPA that the Facility includes a Clean Unit.] direction.]~~

(2) Penalty Determination

- (a) The penalty for a Facility shall be \$5,000, adjusted pursuant to subsection (D)(2)(b), per ton of Actual Emissions during a calendar year that exceed 80% percent of the baseline emissions, as specified below:

$$P = 5000 \times [E_a - (0.8 \times E_b)] \times C$$

Where:

<u>P</u>	<u>=</u>	<u>Penalty (in dollars)</u>
<u>E<sub>a</sub></u>	<u>=</u>	<u>Actual Emissions</u>
<u>E<sub>b</sub></u>	<u>=</u>	<u>Baseline Emissions</u>
<u>C</u>	<u>=</u>	<u>Percent change in the Consumer Price Index as determined by subsection (D)(2)(b)</u>

- (b) The change in the Consumer Price Index shall be determined in accordance with the provisions of 42 U.S.C. §7511d(b)(3) (Federal Clean Air Act §185(b)(3)) and 42 U.S.C. §7661a(b)(3)(B)(v) (Federal Clean Air Act §502(b)(3)(B)(v)).

(E) Equivalency Determination

(1) Federal Clean Air Act Section 185 Equivalency “Tracking Account”

- (a) The APCO shall establish and maintain a Federal Clean Air Act Section 185 Equivalency “Tracking Account.” Such Tracking Account shall be credited with actual expenditures occurring in calendar years beginning the calendar year in which this rule is adopted on qualified programs that are designed to fund projects which:
- (i) Are surplus to the SIP for the Federal one-hour Ozone standard;
  - (ii) Have been certified by the APCO, the Executive Officer of CARB and USEPA as being surplus to the SIP; and [Modified pursuant to USEPA comment letter of 09/15/11 #7.]
  - (iii) Are designed to result in direct, or to facilitate future, VOC or NO<sub>x</sub> reductions within the District from uses as approved by USEPA.
- (b) Expenditures credited to the Federal Clean Air Act Section 185 Equivalency “Tracking Account” need not actually be held by or disbursed by the District provided the source of the expenditures is an eligible project in a qualified program.

- (c) Expenditures shall be credited on a dollar for dollar basis and shall not be discounted due to the passage of time.
- (d) If expenditures credited for a given year are greater than those necessary for the demonstration of equivalency for that year the surplus may accumulate and be used as needed to demonstrate equivalency in subsequent years.

*[Derived from SCAQMD 317(c)(1).]*

(2) AQMA Accounting

- (a) By July 1, on an annual basis, the APCO shall request an accounting of applicable expenditures, as defined in subsection (E)(1)(a), made within the portions of the AQMA that are under the jurisdiction of the Mojave Desert Air Quality Management District and the South Coast Air Quality Management District from the APCO or Executive Officer of each respective district. *[Date included for the regulated community and the public to more clearly understand how the rule is to be implemented, pursuant to USEPA comment letter of 09/15/11 #8.]*
- (b) By July 1, on an annual basis, the APCO shall request an accounting of the applicable penalty obligation, as determined in subsection (D)(2), for sources within the portions of the AQMA that are under the jurisdiction of the Mojave Desert Air Quality Management District and the South Coast Air Quality Management District from the APCO or Executive Officer of each respective district. *[Revised to specify penalty "obligation" pursuant to CARB comment letter of 09/08/11 #1 and USEPA comment letter of 09/15/11 #9. Date included for the regulated community and the public to more clearly understand how the rule is to be implemented, pursuant to USEPA comment letter of 09/15/11 #8.]*
- (c) By July 1, on an annual basis, the APCO shall request an accounting of the applicable penalty fees collected within the portions of the AQMA that are under jurisdiction of the Mojave Desert Air Quality management District and the South Coast Air Quality Management District from the APCO or the Executive Officer of each respective District. *[Clarification provided pursuant to CARB comment of 9/08/11 #1. Date included for the regulated community and the public to more clearly understand how the rule is to be implemented, pursuant to USEPA comment letter of 09/15/11 #8.]*
- (d) The annual applicable expenditures made within the portions of the three districts that are within the AQMA together during a given calendar year shall be referred to as the "Combined AQMA Equivalency Tracking Account" for that calendar year.
- (e) The annual applicable penalty obligations determined within the portions of the three districts that are within the AQMA together during a given calendar year shall be referred to as the "Combined AQMA Penalties" for that calendar year. *[Revised to specify penalty "obligation" pursuant to USEPA comment letter of 09/15/11 #9.]*

(3) Equivalency Determination

- (a) By August 1, on an annual basis, the APCO shall also make a determination of equivalency according to the following formula: *[Date included for the regulated community and the public to more clearly understand how the rule is to be implemented, pursuant to USEPA comment letter of 09/15/11 #8.]*

$$\underline{B_f = (B_i + E) - AP}$$

Where:

- $B_i$       $\equiv$      The initial balance of the Federal Clean Air Act Section 185 Combined AQMA Equivalency “Tracking Account” as existing at the beginning of the calendar year for which the equivalency determination is being made.
- $E$       $\equiv$      The expenditures credited to the Federal Clean Air Act Section 185 Combined AQMA Equivalency “Tracking Account” during the calendar year for which the equivalency determination is being made.
- $AP$       $\equiv$      The Combined AQMA Penalty amount determined by the APCO pursuant to subsections (E)(2)(b) and (E)(2)(c) above.
- $B_f$       $\equiv$      The balance of the Federal Clean Air Act Section Combined AQMA Equivalency Tracking Account to be carried over into the subsequent calendar year as  $B_i$  if such amount is greater than zero. The remaining penalty to be allocated to applicable Facilities pursuant to subsection (E)(4) below if such amount is less than zero.

*[Derived from SCAQMD 317(c)(2-4)]*

*[Relocated to Section (F) to reflect the fact that, sequentially, the reporting requirements follow the accounting pursuant to CARB comment letter of 9/9/11 #4.]*

(4) Partial Equivalency Determination and Calculation of Penalty

- (a) If the balance of the Federal Clean Air Act Section 185 Combined AQMA Equivalency Tracking Account is less than zero in any particular year then the APCO shall determine the penalty amount owed by each Facility as follows:

$$\underline{P_{ry} = P_y \times \left( \frac{|B_{fy}|}{AP_y} \right)}$$

Where:

<u>P<sub>ry</sub></u>	≡	<u>Residual penalty for calendar year y</u>
<u>P<sub>y</sub></u>	≡	<u>Penalty amount for calendar year y as calculated in subsection (D)(2)</u>
<u> B<sub>fy</sub> </u>	≡	<u>Absolute value of negative balance of equivalency tracking account for calendar year y as calculated in subsection (E)(2)</u>
<u>AP<sub>y</sub></u>	≡	<u>Sum of all P<sub>y</sub> as calculated in subsection (D)(2)</u>

- (b) No later than August 15, on an annual basis as required, the APCO shall thereafter notify the facility by mail of the penalty amount due and payable as calculated on a facility basis in (E)(4)(a), with the penalty due within 30 days. If the penalty is not paid by the due date specified in the notice, the subject facility permits will be suspended and a suspension notification will be made by mail within 15 days of the due date. A suspended permit may be reinstated by payment of the applicable penalty. *[Dates included for the regulated community and the public to more clearly understand how the rule is to be implemented, pursuant to USEPA comment letter of 09/15/11 #8 and #14.]*

## (F) Reporting Requirements

- (1) Commencing the year this rule is adopted, and on or before 12/31 thereafter, the APCO shall file a report for the prior year accounting with CARB and USEPA that contains the following: *[Deadline for submittal added pursuant to for the regulated community and the public to more clearly understand how the rule is to be implemented, pursuant to USEPA comment letter of 09/15/11 #8 and #12, and CARB comment letter on 9/8/11.]*
- (a) A listing of all Facilities subject to this rule and the potential penalty obligation as calculated pursuant to Section (D) above for the prior calendar year;
- [Removed duplicative requirement. See (F)(1)(b).]*
- (b) The Combined AQMA Penalties for the prior calendar year;
- (c) The balance of the Federal Clean Air Act Section 185 Combined AQMA Equivalency Tracking Account, if any, at the beginning of the prior calendar year;
- (d) A listing of all qualified programs and expenditures associated with each program that were credited into the Federal Clean Air Act Section 185 Combined AQMA Equivalency Tracking Account during the prior calendar year;

- (e) The results of the calculation pursuant to subsection (E)(3)(a) above; and *[Cross reference corrected pursuant to USEPA comment letter of 09/15/11 #13.]*
- (f) The results of the remaining penalty allocation calculation pursuant to subsection (E)(4)(a) if any. *[Cross reference corrected pursuant to USEPA comment letter of 09/15/11 #13.]*

*[Derived from SCAQMD 317(c)(5)]*

See SIP Table at <http://www.avaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=921>



[Attachment A](#)

List of Qualified Programs for Section 172(e) Equivalency Tracking Account			
Name	Ongoing/One-Time	Year	Expenditure
Carl Moyer	Ongoing	Year 13 (Fiscal Year 2010/2011)	\$443,000
AB2766	Ongoing	01/10-12/10	\$1,050,000
AB923	Ongoing	01/10-12/10	\$525,000
AB118 (AQIP)			
Lawn and Garden Equipment Replacement Program	One-Time	2010/2011	\$20,000